

The Honorable James L. Robert

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

NO. CR17-233JLR

Plaintiff,

V.

GOVERNMENT'S SENTENCING MEMORANDUM

JESUS OCTAVIO RODRIGUEZ-PAYAN,

Defendant.

COMES NOW the United States of America, by and through Brian Moran, United States Attorney for the Western District of Washington, and Mike Lang and Nicholas Manheim, Assistant United States Attorneys for said District, and files this Sentencing Memorandum.

The United States respectfully requests that the Court sentence the defendant to the agreed-upon eleven years in prison, followed by five years of supervised release, and the mandatory \$100 special assessment.

11

11

11

1 **I. DISCUSSION**

2 This defendant is the twelfth and final conspirator to be sentenced in “Operation
 3 Heidra,” an investigation that began in November 2016 when the defendant hand-
 4 delivered \$83,000 in cash to a Drug Enforcement Administration (DEA) cooperating
 5 witness, and culminated in September 2017, when the DEA executed search warrants on
 6 more than a dozen locations, from Seattle to Spokane to Los Angeles. The defendant,
 7 who was in Mexico when those warrants were served, was arrested on February 1, 2019
 8 attempting to enter the United States from Mexico.

9 The Court is well-acquainted with the facts of this conspiracy, having presided
 10 over the sentencing of every other co-defendant in the related case of *United States v.*
 11 *Ruelas-Payan, et al.* (CR17-229). Accordingly, in this Memorandum, the government
 12 will attempt to be efficient with the court’s time, while still acknowledging the unique
 13 circumstances of this defendant.

14 In determining the appropriate sentence, among the factors for this Court to
 15 consider are the nature and circumstances of the offense charged, the history and
 16 characteristics of the defendant, and the need for the sentence to reflect the seriousness of
 17 the offense and afford adequate deterrence. 18 U.S.C. § 3553(a). These factors will be
 18 addressed below.

19 **A. The Guidelines Calculations.**

20 The government generally agrees with the calculations set forth by the Probation
 21 Department in its Pre-Sentence Investigation Report. However, the government believes
 22 the defendant was one of the local leaders of this enterprise (together with co-defendant
 23 Francisco Ruelas-Payan) and thus qualifies for a two level enhancement pursuant to
 24 USSG § 3B1.1. The government’s position is based upon proffers from other
 25 conspirators, and phone calls in which the defendant is either heard instructing others, or
 26 being referred to in a position of leadership. Some of these calls include: a recorded call
 27 on November 21, 2016 in which the defendant says he will send someone to deliver
 28 cocaine (the deliverer turned out to be Ruelas-Payan); a recorded call on 21 November

1 2017 in which Ruelas-Payan refers to the defendant as “the boss;” and a recorded call on
 2 7 June 2017 in which the defendant instructs Ruelas-Payan to have co-defendant Ulloa-
 3 Sarmiento go to a bank to launder funds.

4 The defendant has no criminal history, yielding a Criminal History Category of I.
 5 Pursuant to the U.S. Sentencing Guidelines, the government calculates the defendant’s
 6 Offense Level and Guidelines range as follows:

7 **Count One (Conspiracy to Distribute Controlled Substances):**

8 Base Offense Level (USSG § 2D1.1):	32
9 Maintenance of a drug premises (USSG § 2D1.1 (b)(12))	
10 +2	
11 Role in the offense (USSG § 3B1.1)	
12 +2	
13	36

14 **Count Two (Conspiracy to Commit Money Laundering):**

15 Pursuant to USSG § 2S1.1, this base offense level is calculated by taking the
 16 offense level for the underlying offense from which the laundered funds were derived,
 17 which is 36.

18 Base Offense Level (USSG § 2S1.1 and 2D1.1)	36
19 Conviction under 18 U.S.C. § 1956 (USSG § 2S1.1 (b)(2)(B)):	
20 +2	
21	38

22 Pursuant to USSG § 3C1.1(c), in cases involving money laundering and an
 23 underlying offense from which the laundered funds were derived, the counts are grouped
 24 according to USSG § 3C1.2(c). (See, USSG § 2S1.1, Application Note 6). The count
 25 with the highest offense level is used to determine the offense level. USSG § 3D1.3.
 26 Here, the money laundering count produces the higher offense level. Therefore, the
 27 government has used it to determine the offense level for purposes of sentencing.

Offense level:

38

Acceptance of Responsibility (USSG § 3E1.1):

-3

Total Offense Level:

35

Guidelines Range: 168-210 months (14 – 17.5 years)

B. The Defendant's History and Characteristics.

9 The government does not dispute the defendant's biography as reported in the Pre-
10 Sentence Report. This biography paints the picture of a young man (merely age 22)
11 deserving of a sentence below the guidelines range as agreed to by the parties. The
12 defendant has no criminal history, a young daughter, an apparently loving family, the
13 brightness to enroll in college, apparent ambition, and good career prospects had he not
14 turned to drug trafficking. This history supports a sentence reflecting a degree of mercy
15 and compassion, as it is well below the US Guidelines range. However, the proposed
16 sentence is also strict, as it will keep the defendant in prison throughout the decade of his
17 twenties.

18 That said, some of these same traits (such as his mental acuity and ambition) may
19 explain why this young man – merely age 19 at the peak of this conspiracy – was trusted
20 enough by a Mexican drug trafficking organization to lead this conspiracy in Western
21 Washington (with his co-conspirator and cousin, Francisco Ruelas-Payan). The defendant
22 was clearly one of the trusted local leaders of this bustling drug enterprise, as reflected in
23 numerous wiretap transcripts where the DEA heard him discussing prices and sales of
24 heroin (“black girl”), methamphetamine (“water”), cocaine (“a little toy”), and fentanyl
25 (“blues”). It must be acknowledged that the defendant’s “characteristics,” therefore, are
26 of someone with no compunction about trafficking in deadly narcotics, with the attendant
27 cunning and amorality such a life requires. The eleven year sentence takes these
28 characteristics into account.

1 **C. The Nature and Circumstances of the Offense.**

2 The sentence recommendation also considers the nature and circumstances of the
 3 defendant's offense. This drug and money laundering scheme lasted for many months,
 4 extended up and down the I-5 corridor, into Mexico, and involved many kilograms of
 5 heroin, as well as cocaine, fentanyl, and methamphetamine. Aside from its geographic
 6 reach and variety of products, this conspiracy was unique in that it stood at the vanguard
 7 of the deadly fentanyl trade in this District. When DEA agents seized "blue pills" from
 8 the defendant's apartment in September 2017, the agents did not know what these pills
 9 were. They do now. The defendant and his compatriots were the advance team for one of
 10 the deadliest illicit drug epidemics to ever hit Western Washington. The serious nature of
 11 this enterprise cannot be overstated.

12 Fentanyl was not the only drug this enterprise poured into the community. Heroin
 13 was its stock in trade. During one wiretapped message (on 3 July 2017), co-conspirator
 14 Jason Taylor texted the defendant to tell him (about his heroin): "If I keep getting stuff
 15 this good from you, I'll have the whole city [of Spokane] buying from me in no time."
 16 Words to be proud of. Two weeks later, in August 2017, the conspiracy was rattled when
 17 police seized thirteen pounds of heroin as it was coming up from southern California. At
 18 the takedown in September 2017, agents seized more than six pounds of heroin. The list
 19 could go on, but the point is clear – the defendant and his co-conspirators were
 20 responsible for distributing significant quantities of deadly heroin and fentanyl into
 21 Washington State.

22 **D. The Need for Deterrence.**

23 The eleven year sentence is necessary to promote respect for the law, and to deter
 24 the defendant and other drug traffickers from continuing their deadly trade.

25 //

26 //

27 //

1 **E. The Need to Avoid Unwanted Sentencing Disparities**

2 The parties have attempted to fashion a recommendation that properly accounts
 3 for the defendant's sentence in relation to his co-defendants. The following chart reveals
 4 the hierarchy of these sentences:

Defendant	Factors	Sentence
Francisco Ruelas-Payan	Local leader with defendant; guns and heroin at arrest	180 months (15 years)
Jesus Rodriguez Payan	Local leader; no criminal history, and no guns	132 months (11 years)
Jung Min Kang	Everett drug re-seller; possessed guns; criminal history	120 months
Jason Taylor	Spokane area re-seller; possessed guns; criminal history	120 months
Jorge Mathus-Velasquez	Re-seller	60 months
Agustin Delgado-Ibarra	Money launderer	60 months
Felix Antonio Sarabia Pena	Re-seller	72 months
Jorge Ulloa Sarmiento	Money launderer for the conspiracy	46 months
Jario Matus-Villalobos	Bought from Ruelas-Payan	33 months

1		
2	Jose de la Cruz Rodriguez	Arrested at takedown/limited involvement otherwise
3	Nelly Romero Romero	Lower level dealer
4	Maria DeLeon	Ruelas-Payan's girlfriend; limited role
5		DREAM Court graduate
6		
7		
8		
9		

10 The joint sentence recommendation, when placed in this hierarchy, appears to
 11 properly account for the defendant's role (the proposed sentence is higher than that of any
 12 other conspirator except for Mr. Ruelas-Payan), the fact that he did not possess firearms,
 13 and his lack of criminal history. Importantly, these latter two factors distinguish him from
 14 defendants Kang, Taylor, and Ruelas Payan.

15 For example, Jung Kang was a convicted felon who pleaded guilty to possessing
 16 multiple firearms. Agents recovered three firearms from Kang's residence (two
 17 semiautomatic pistols and a semiautomatic shotgun), as well as ammunition and
 18 magazines. Kang had seven criminal history points, including a prior Washington State
 19 felony drug conviction for Possession with Intent to Distribute.

20 Jason Taylor's ten year sentence resulted from similar circumstances. At arrest,
 21 Taylor possessed four guns, including an AR-15 assault rifle. He had thirteen criminal
 22 history points arising from multiple convictions in Tennessee, California, and
 23 Washington. His most recent conviction had been a felony drug offense in California for
 24 trafficking in heroin, cocaine, and fentanyl, for which he had received a suspended
 25 sentence and had absconded from supervision.

26 Francisco Ruelas-Payan received a fifteen year sentence – four years higher than
 27 the government is recommending for Mr. Rodriguez-Payan. However, Ruelas-Payan
 28

1 possessed two handguns – a Taurus revolver and a .40 caliber semi-automatic pistol, as
2 well as an AR-15 magazine. On intercepted wiretap calls, DEA agents heard Ruelas-
3 Payan discussing shipping guns back to Mexico. As the government explained in its
4 Sentencing Memorandum for Mr. Ruelas-Payan:

5 Equally important, Defendant made the decision to arm
6 himself. He appears to have shipped guns back to Mexico,
7 where they undoubtedly are used in the hyper-violent
8 environment seen in that country due to the drug trade. The
9 fact that a loaded magazine for an assault rifle – but not the
10 rifle itself – was recovered should concern the Court. He also
11 possessed other guns, including a large-caliber revolver, and
12 was carrying a firearm when he was arrested. Gun possession
13 by drug traffickers exposes others, including law
14 enforcement, to potential violence, and is an aggravating
15 factor.

16
17 Placed in this context, the defendant, who has no criminal history, and possessed no
18 firearms or ammunition, appears deserving of the more lenient eleven year sentence
19 recommendation.

20 //

21 //

22 //

23

24

25

26

27

28

II. CONCLUSION

In sum, the § 3553 factors justify the parties' agreed recommendation of eleven years confinement. This sentence acknowledges the defendant's unique characteristics, will achieve the ends of justice, and is no longer than necessary.

DATED this 28th day of February, 2020.

Respectfully submitted,

BRIAN MORAN
United States Attorney

s/Mike Lang
MIKE LANG
Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Telephone: (206) 553-7970
Fax: (206) 553-2502
E-mail: mike.lang@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/ John M. Price
JOHN M. PRICE
Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-4228
Fax: (206) 553-4440
E-mail: john.price2@usdoj.gov